UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

CONSORZIO DEL PROSCIUTTO
DI SAN DANIELE
v. **C.A. No.: 07-039ML**
DANIELE, INC.

DEFENDANT, DANIELE, INC.'S, STATEMENT OF DISPUTED FACTS

Defendant responds to plaintiff's statement of undisputed facts and disputes the factual assertions alleged in the following numbers:

Number 10

Plaintiff omitted the fifth (5^{th}) trademark, which is *RISERVA*. (See, Exhibit A which is the Affidavit of Vlado Dukcevich filed in support of defendant's cross-motion for summary judgment at paragraph 18).

Number 12

Defendant is using five (5) different trademarks for its five (5) different prosciutto products. Defendant disputes that there has to be only one (1) trademark used on all the different prosciutto products sold by Daniele, Inc. to its wholesale customers. (See Exhibit A).

Number 13

Defendant denies this assertion. Daniele, Inc. is a trade name. It is not being used as a trademark. Defendant is authorized by the agreement to use Daniele, Inc. in its logo for the sale of its prosciutto (See, paragraph 2 of the March 25, 2005 agreement). Defendant is using five (5) trademarks which bear no resemblance to "San Daniele," and defendant has sought to register each of these trademarks with the U.S. Trademark office. (See, Exhibit A at paragraphs 18 and 22 attached to defendant's cross-motion for summary judgment).

Number 14

Defendant agrees that the fictitious name, *Daniele, Inc.*, is a trade name and is being used in the logo on defendant's prosciutto products as permitted by sections 2 and 6 of the March 25, 2005 agreement. Defendant denies that this is the only name that appears on the packaging. Defendant is using five (5) trademarks that appear on its packaging labels in the lettering requirements set forth in section 6 of the agreement. (The five (5) different product trademarks are depicted on copies of the packaging labels set forth in paragraph 19 of Exhibit A to defendant's cross-motion for summary judgment).

Number 15

Defendant's website is operated by a third party and was modified in January of 2006 to be in compliance with the March 25, 2005 agreement. (See Exhibit A).

Number 16

Defendant's website was modified to be in compliance with the settlement agreement in January of 2006. (See Exhibit A).

Number 17

Defendant disputes whether the recipe set forth in the website falls within the ambit of the settlement agreement dated March 25, 2005 but nevertheless changed the wording of the website when defendant was notified that plaintiff objected to the wording. (See Exhibit A).

Number 18

Defendant disputes whether the recipe fits within the terms of the settlement agreement dated March 25, 2005 but nevertheless changed the website upon being notified that plaintiff objected to the wording. (See Exhibit A).

Number 19

Defendant disputes whether the recipe fits within the terms of the settlement agreement dated March 25, 2005 but nevertheless modified the website upon plaintiff's objection to the wording used in the recipe. (See Exhibit A).

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CERTIFICATION

The undersigned hereby certifies that this document has been filed electronically on this 29th day of June, 2007 and is available for viewing and downloading to the ECF registered counsel of record:

Via Electronic Service/ECF:

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CERTIFICATION

The undersigned hereby certifies that a true copy of the within document was forwarded on this 29th day of June, 2007, via first class mail, postage pre-paid, to the following attorneys of record:

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